



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 27, 1989

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1989-20

Bruce C. Bigelow, Esquire
Case & Lynch
P.O. Box 494
Honolulu, Hawaii 96809-0494

Dear Mr. Bigelow:

This responds to your letter dated September 5, 1989, requesting an advisory opinion on behalf of Kuilima Development Company, Inc. ("Kuilima") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to contributions in non-Federal elections by a political action committee which depends on financial support from a Japanese corporation.

You state that Kuilima proposes to "establish" a political action committee which will make contributions to candidates in state and local elections in Hawaii. According to your request, Kuilima is a wholly owned subsidiary of Asahi Jyuken (U.S.A.), Inc. ("Asahi USA"), which is, in turn, a wholly owned subsidiary of Asahi Juken Co., Ltd. ("Asahi Japan"). Kuilima and Asahi USA are incorporated under the laws of Hawaii, while Asahi Japan is incorporated under Japanese law. The principal places of business and the executive and administrative offices of Kuilima and Asahi USA are located in Hawaii. All of the directors and officers of those two companies are Japanese nationals, but most of their employees and consultants are citizens of the United States.

You note that Kuilima is involved in developing commercial real estate projects in Hawaii and that all of its projects are in the first stages of development. These projects do not generate income for Kuilima. Kuilima, therefore, obtains almost all of its funding from loans and contributions to capital by Asahi USA which, in turn, obtains most of its funding from loans and contributions to capital by Asahi Japan.

You state that the proposed political action committee "will be run independently of Kuilima," and will be governed by three persons, each of whom will be a United States citizen. These persons will exercise all decision-making authority with respect to the committee. You state that their decisions will not be dictated or directed by Kuilima, Asahi USA, Asahi Japan, or any of their officers or directors. The committee will not make contributions to Federal candidates. It will not solicit or accept funds from persons who are foreign nationals, but will obtain most, and perhaps all, of its funding through corporate contributions from Kuilima.

You ask whether, under the Act and regulations, the committee will be permitted to make contributions to state and local candidates in Hawaii. Implicit in your question is the issue of whether the committee, as a contributor to state and local candidates, may accept contributions from Kuilima.

Under the Act and Commission regulations, foreign nationals are prohibited from making contributions, directly or through any other person, in connection with an election to any political office. In addition, it is unlawful for any person to solicit, accept, or receive any such contribution from a foreign national. 2 U.S.C. 441e(a); 11 CFR 110.4(a)(1) and (2). As defined in the Act, the term "person" includes a corporation or a committee.¹ 2 U.S.C. 431(11). Unlike most of the other provisions of the Act, 441e applies to any election for any political office, including state and local offices as well as Federal offices. According to 2 U.S.C. 441e(b)(1), the term "foreign national" includes a "foreign principal" as defined specifically by 22 U.S.C. 611(b). Section 611(b) defines a "foreign principal" as including:

- (1) a government of a foreign country and a foreign political party:
- (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
- (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Under 22 U.S.C. 611(b), a corporation organized under the laws of any state within the United States whose principal place of business is within the United States is not a foreign principal and, accordingly, would not be a foreign national under 2 U.S.C. 441e. Section 441e, however, also prohibits contributions by a foreign national through any other person. Asahi Japan is a foreign national under 22 U.S.C. 611(b)(3). Because Asahi Japan is the predominant source of funds for Kuilima and, through Asahi USA, owns all of Kuilima, it would essentially be making contributions to the committee through Kuilima. Such contributions to a committee supporting state and local candidates would be contrary to the Act and regulations. See Advisory Opinion 1985-3. In addition, because the committee will accept most and perhaps all of its funds from such a source, it would be acting as a vehicle through which funds were sent to state and local

candidates. Contributions by the committee to such candidates would, therefore, be prohibited. See Advisory Opinion 1981-36.

In determining whether a corporation that is not a foreign national, but is a subsidiary of a foreign national parent, is permitted to make contributions in connection with state and local campaigns for political office, the Commission has also considered the status of the decision-makers involved. The Commission has conditioned such permission on the basis that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making the proposed contributions. See Advisory Opinions 1985-3 and 1982-10. Since all of the directors and officers of Kuilima are foreign nationals, it appears that the company will not be able to satisfy this condition. Therefore, even if Kuilima were not funded predominantly by a foreign national corporation, it still would not be able to contribute to the proposed committee.

This response constitutes an advisory opinion concerning application of the Act or regulations prescribed by the Commission to the specific transactions or activities set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (Advisory Opinions 1985-3, 1982-10, and 1981-36)

1/ The Commission notes that the Hawaiian statutory sections pertaining to "Election Campaign Contributions and Expenditures" permit corporate contributions up to \$2,000 per election for state and local candidates. HRS 11-191(17) and 11-204(a). Hawaiian election statutory provisions cannot, however, allow a corporation to engage in activity that is barred by 2 U.S.C. 441e.